

1 Dean M. Harvey (SBN 250298)  
Katherine Lubin (SBN 259826)  
2 Yaman Salahi (SBN 288752)  
Adam Gitlin (SBN 317047)  
3 Jallé Dafa (SBN 290637)  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
4 275 Battery Street, 29th Floor  
San Francisco, CA 94111  
5 Telephone: (415) 956-1000  
dharvey@lchb.com  
6 kbenson@lchb.com  
ysalahi@lchb.com  
7 agitlin@lchb.com  
jdafa@lchb.com

8 *Interim Class Counsel*

9 *(Additional counsel listed on signature page)*

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 OAKLAND DIVISION

15 IN RE CALIFORNIA BAIL BOND  
16 ANTITRUST LITIGATION

Master Case No. 4:19-CV-00717-JST

**PLAINTIFFS' OBJECTION TO  
DEFENDANTS' REPLY EVIDENCE**

17 THIS DOCUMENT RELATES TO:

18 All Actions  
19  
20

1     **I.     INTRODUCTION**

2             Plaintiffs object to purported evidence Defendants submitted for the first time in their  
3     reply in support of their motion to dismiss the Second Consolidated Amended Complaint (ECF  
4     No. 123) (“MTD Reply”). In a footnote, Defendants ask the Court to take judicial notice of what  
5     Defendants claim to be examples of “advertisements for rebates.” MTD Reply at 29 & n.9.<sup>1</sup>  
6     According to Defendants, these examples prove that “Plaintiffs’ characterization of the state of  
7     the California Bail Bond market is demonstrably false.” *Id.* at 29-30. Defendants are mistaken.  
8     Their request to take judicial notice is improper and should be rejected. Even if considered, these  
9     examples do not disprove any allegation in the Second Consolidated Amended Complaint.

10    **II.    LEGAL STANDARD**

11            Local Rule 7-3(d)(1) provides that “[i]f new evidence has been submitted on reply, the  
12    opposing party may file and serve an Objection to Reply Evidence . . . stating its objections to the  
13    new evidence.” Local Rule 7-3(d)(1). Evidence submitted for the first time in reply should not  
14    be considered and should be stricken. *See, e.g., TPK Touch Sols., Inc. v. Wintek Electro-Optics*  
15    *Corporation*, No. 13-CV-02218-JST, 2013 WL 5289015, at \*4 (N.D. Cal. Sept. 18, 2013) (Tigar,  
16    J. ) (“The court does not consider new facts or argument made for the first time in a reply brief.”);  
17    *24/7 Customer, Inc. v. LivePerson, Inc.*, No. 15-CV-02897-JST, 2017 WL 2311272, at \*8 n.6  
18    (N.D. Cal. May 25, 2017) (Tigar, J.) (sustaining opposing party’s objection and striking new  
19    evidence on reply); *Sheets v. F. Hoffmann-La Roche Ltd.*, No. 18-CV-04565-JST, 2018 WL  
20    6428460, at \*2 (N.D. Cal. Dec. 7, 2018) (Tigar, J.) (same).

21            Further, in deciding a motion to dismiss, courts are generally limited to the pleadings. *See*  
22    *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001).

23    **III.   ARGUMENT**

24            **A.     Defendants’ Request For Judicial Notice Is Improper**

25            Defendants’ request for judicial notice is improper and should be rejected for several  
26    reasons. First, the purported evidence was introduced for the first time on reply, and should be  
27    struck on that basis alone. If Defendants thought that their “examples” were relevant to their

28    <sup>1</sup> Pincites to documents filed on the Court’s docket follow the ECF-stamped pagination.

1 motion, they should have provided them in their opening materials.

2 Second, Defendants refer the Court to the results of a purported Google search. MTD  
3 Reply at 29. But “Google search results are not proper subjects of judicial notice because the  
4 results of a Google search are continually changing and thus cannot be accurately and readily  
5 determined from sources whose accuracy cannot reasonably be questioned.” *Better Homes*  
6 *Realty, Inc. v. Watmore*, No. 3:16-CV01607-BENMDD, 2017 WL 1400065, at \*3 (S.D. Cal. Apr.  
7 18, 2017) (citations omitted). *See also Cahen v. Toyota Motor Corp.*, 147 F. Supp. 3d 955, 963  
8 n.2 (N.D. Cal. 2015) (screen shot of a Google search result “is inappropriate for a request  
9 for judicial notice”).

10 Third, to the extent Defendants seek to introduce the four webpages identified (MTD  
11 Reply at 29), that material is not judicially noticeable because Defendants did not provide the  
12 Court with the necessary information—namely, printouts of the webpages for which they sought  
13 judicial review—leaving the Court with only a changeable hyperlink. *See Caldwell v. Caldwell*,  
14 No. C 05-4166 PJH, 2006 WL 618511, at \*3-4 (N.D. Cal. Mar. 13, 2006), *order clarified*, No. C  
15 05-4166 PJH, 2006 WL 734405 (N.D. Cal. Mar. 20, 2006) (refusing to take judicial notice of a  
16 website where “Defendants have not attached a hard copy of any portion of the website to their  
17 request” which the court found “especially significant, given the changing and changeable nature  
18 of internet websites”). Indeed, as explained further below, one of the websites is currently  
19 inaccessible. *See, e.g., Major v. City & Cty. of San Francisco*, No. 15-CV-03426-KAW, 2017  
20 WL 4419175, at \*5 (N.D. Cal. Oct. 5, 2017) (denying judicial notice where “the court cannot  
21 access the link”).

22 Finally, the material is not the proper subject of judicial notice because Plaintiffs dispute  
23 whether the webpages actually advertise “rebates” within the meaning of Plaintiffs’ allegations  
24 and Proposition 103 (that is, rebates out of the bail agent’s commission), as opposed to merely  
25 referring to “preferred” rate categories the Surety Defendants offer to consumers meeting certain  
26 limited criteria (what Defendants sometimes refer to as “discounts”). Defendants have not  
27 provided sufficient information from which to determine whether these are examples of actual  
28 Proposition 103 rebates rather than “preferred” rate categories. As explained below, there is at

1 least a reasonable dispute about what these webpages actually show. Judicial notice would thus  
2 be improper. *Lee*, 250 F.3d at 689 (“[A] court may not take judicial notice of a fact that is  
3 ‘subject to reasonable dispute.’” (quoting Fed. R. Evid. 201(b))).

4 **B. Defendants’ “Examples” Do Nothing To Rebut Plaintiffs’ Allegations**

5 Even if considered, the “examples” Defendants cite do not contradict the Second  
6 Consolidated Amended Complaint (ECF No. 94; “SCAC”). Defendants contend that the results  
7 of a Google search for “California bail rebates” conclusively disprove factual allegations in the  
8 SCAC. MTD Reply at 29-30. Defendants do not explain when or how they ran this search.  
9 Presumably, the search occurred after Plaintiffs’ July 13, 2020 Opposition Brief (ECF No. 117)—  
10 over a year and a half after Plaintiffs initially filed suit on January 29, 2019. Any advertised  
11 rebates occurring now may simply be a response to this lawsuit challenging Defendants’ efforts to  
12 suppress them. Indeed, the first Google search result is to a news report about this action.  
13 Declaration of Katherine Lubin (“Lubin Decl”) ¶ 5.

14 The only link Defendants provide that is dated before the filing of this action is to a 2013  
15 blog post: <http://chickiesbailbonds.com/2013/05/01/scoop-from-the-coop-issue-3/>. MTD Reply  
16 at 29. The link does not currently function. Lubin Decl. ¶ 4, Ex. 3 (webpage printout as of  
17 August 10, 2020). Indeed, the homepage [www.chickiesbailbonds.com](http://www.chickiesbailbonds.com) does not function either.  
18 *Id.* ¶ 4; Ex. 4. Regardless, Plaintiffs had already come across this 2013 blog post in their  
19 investigation, *and refer to it in the SCAC*. See SCAC ¶ 92 (“Plaintiffs have been able to identify  
20 only one other public acknowledgement among the thousands of California bail agents about their  
21 rebating authority under Proposition 103.”); Lubin Decl. ¶ 3. Since the website is unavailable,  
22 Plaintiffs provide an archived version of the page. Lubin Decl., Ex. 2. And even this page does  
23 not advertise any specific rebate. *Id.* To the contrary, it only says that rebates “will be available  
24 under *certain* circumstances,” (emphasis added), suggesting that lower prices are available  
25 through lower rates for specific categories of customers, not necessarily through rebates off of the  
26 agents’ commission. *Id.* This interpretation is consistent with how other webpages describe the  
27 availability of rebates.

28 For instance, the only specific advertised rebate to which Defendants cite is to a statement

1 on [www.luckybail.com](http://www.luckybail.com) regarding their “20% rebate program.” MTD Reply at 29; Lubin Decl.,  
2 Ex. 1. But this likely refers to an 8% preferred rate available only to customers who meet certain  
3 criteria, providing the appearance of a 20% “rebate” off of the “standard” rate of 10%. This is  
4 exactly how other results from Defendants’ Google search for “California bail rebates” describe  
5 their “rebates.” *See, e.g.*, Lubin Decl. ¶ 5, Ex. 5 (<http://www.ajuabailbonds.com/>) (“You may also  
6 qualify for up to a 20% rebate if you meet applicable conditions such as: Private Attorney[,]  
7 Union Member[,], Military Discount[, or] AARP Member”). Rather than true Proposition 103  
8 rebates, these “rebates” appear to be nothing more than references to the “preferred” rates  
9 discussed at length in the parties’ briefs.

10 Thus, Defendants’ examples, even if considered, only show the undisputed availability of  
11 lower premiums to customers meeting certain limited criteria, not advertisements of rebates  
12 below those rates. These examples make the same use of the word “rebate” that Defendants  
13 earlier criticized Plaintiffs for using. *See* Reply in Support of Motion to Dismiss the First  
14 Amended Complaint, ECF No. 72 at 9-10 (“Plaintiffs obfuscate premiums . . . with the agents’  
15 right to rebate purchasers some portion of their commission.”)

#### 16 **IV. CONCLUSION**

17 For the foregoing reasons, Plaintiffs respectfully request that the Court strike the new  
18 factual allegations Defendants made for the first time in their reply brief.

19  
20 Dated: August 10, 2020

Respectfully submitted,

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /s/ Dean M. Harvey

23 Dean M. Harvey (SBN 250298)  
24 Katherine C. Lubin (SBN 259826)  
25 Yaman Salahi (SBN 288752)  
26 Adam Gitlin (SBN 317047)  
27 Jallé Dafa (SBN 290637)  
28 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111  
Telephone: (415) 956-1000

1 dharvey@lchb.com  
2 kbenson@lchb.com  
3 ysalahi@lchb.com  
4 agitlin@lchb.com  
5 jdafa@lchb.com

*Interim Class Counsel*

6 Benjamin David Elga (pro hac vice)  
7 Brian James Shearer (pro hac vice)  
8 JUSTICE CATALYST LAW  
9 81 Prospect St.  
10 Brooklyn, NY 11201  
11 Telephone: (518) 732-6703  
12 belga@justicecatalyst.org  
13 brianshearer@justicecatalyst.org

14 David Seligman (pro hac vice)  
15 TOWARDS JUSTICE  
16 1410 High Street, Suite 300  
17 Denver, CO 80218  
18 Telephone: (720) 441-2236  
19 Facsimile: (303) 957-2289  
20 david@towardsjustice.org

21 Stuart T. Rossman (pro hac vice)  
22 NATIONAL CONSUMER LAW CENTER  
23 7 Winthrop Square, Fourth Floor  
24 Boston, MA 02110-1245  
25 Telephone: (617) 542-8010  
26 Facsimile: (617) 542-8028  
27 srossman@nclc.org

28 Cindy Pánuco (SBN 266921)  
Stephanie Carroll (SBN 263698)  
Nisha Kashyap (SBN 301934)  
PUBLIC COUNSEL  
610 South Ardmere Avenue  
Los Angeles, California, 90005  
Telephone: (213) 385-2977  
Facsimile: (213) 201-4722  
cpanuco@publiccounsel.org  
scarroll@publiccounsel.org  
nkashyap@publiccounsel.org

*Counsel for Plaintiffs and the Proposed Class*